



California Regulatory Notice Register

REGISTER 2004, NO. 42-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

OCTOBER 15, 2004

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by the Office of State Publishing and is offered by subscription for \$302.00 (annual price). To order or make changes to current subscriptions, please call (916) 445-5353 or (916) 445-5386. For outside of the Sacramento area, call (800) 963-7860. Periodicals postage paid at Sacramento, CA and additional mailing offices. **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Customer Coordinator, Office of State Publishing, 344 N. 7th Street, Mass Mail/Addressing Services, Sacramento, CA 95814-0212. The Register can also be accessed at <http://www.oal.ca.gov>.

PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY:

Department of Managed Health Care

A written comment period has been established commencing on **October 15, 2004**, and closing on **November 29, 2004**. Written comments should be directed to the Fair Political Practices Commission, Attention **Kevin S. Moen, PhD**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written

comments must be received no later than **November 29, 2004**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Kevin S. Moen, PhD**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Kevin S. Moen, PhD**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3700, subsections (b) and (c), of the regulations in Title 3 of the California Code of Regulations pertaining to Oak Mortality Disease Control as an emergency action that was effective on September 2, 2004. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than December 31, 2004.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before November 29, 2004.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations, as he deems necessary, to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code Section 5322).

The amendment of Section 3700 subsection (b) established that San Francisco County is a regulated area and that regulated articles and commodities cannot move out of San Francisco County to other non-infested counties without being properly certified. The effect of this amendment is to provide authority for the State to regulate movement of hosts or potential carriers of the disease from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California's agricultural industry.

The amendment of Section 3700 subsection (c) established that *Calluna vulgaris* (heath), *Drimys winteri* (Winter's bark), *Laurus nobilis* (bay laurel) and *Salix caepea* (goat willow) are regulated articles and commodities and that *Vaccinium vitis-idea* (lingonberry) was removed from the list of articles and

commodities regulated. The effect of this amendment is to provide authority for the State to regulate movement of hosts or potential carriers of the disease from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California's agricultural industry. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that the amendment of Section 3700 subsections (b) and (c) does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3700. No reimbursement is required for Section 3700, subsection (b) under Section 17561 of the Government Code because the Agricultural Commissioner of San Francisco County requested the change in the regulation. Additionally, the 13 other affected agricultural commissioners requested that when established as a new host or associated article by a federal order, Section 3700(c) be changed to reflect that.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact of the amended regulation on a representative private person or business is not expected to be significantly adverse. The amendment of Section 3700, subsection (c) will not have an additional cost impact to any known businesses. For the amendment of Section 3700, subsection (b), a representative person or business could incur costs of approximately \$179 per year in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department amended Section 3700, subsections (b) and (c) pursuant to the authority vested by Sections 407, 5321 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department amended Section 3700, subsections (b) and (c) to implement, interpret and make specific Sections 24.5, 5321 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov.

In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the

proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of amendment by contacting the agency officer (contact) named herein.

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

Proposed Amendments to California Code of Regulations, Title 5 Sections 80300, 80303, 80307, 80310 and 80412 Pertaining to the Committee of Credentials

NOTICE OF PROPOSED RULEMAKING

The California Commission on Teacher Credentialing proposes to amend regulatory action described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing on the proposed actions will be held:

December 1, 2004

9:30 a.m.

California Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, California 95814

Oral comments on the proposed action will be taken at the public hearing. We would appreciate 14 days advance notice in order to schedule sufficient time on the agenda for all speakers. Please contact Kim Hunter at (916) 445-0243 if you wish to provide oral comments. Any person wishing to submit written comments at the public hearing may do so. It is requested, but not required, that persons submitting such comments provide fifty copies to be distributed to the commission and interested members of the public. All written statements submitted at the hearing will, however, be given full consideration regardless of the number of copies submitted.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action. The written comment period closes at 5:00 p.m. on November 24, 2004. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 323-6735; write to the California Commission on Teacher Credentialing, attn. Kim Hunter, 1900 Capitol Avenue, Sacramento, California 95814; or submit an email to KHunter@ctc.ca.gov.

Any written comments received 14 days prior to the public hearing will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda presented to the full Commission at the hearing.

AUTHORITY AND REFERENCE

Education Code section 44225 (q) authorizes the Commission to promulgate rules and regulations.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW***Summary of Existing Laws and Regulations*

Staff is proposing modifications to existing regulations made necessary as a result of the enactment of legislation (SB 299, Chap. 342, Stats. 2001) and an appellate decision (*Cross v. CTC, et al.*, 111 Cal. App. 4th 1001 (2003)). Additional proposed changes make technical and clarifying corrections and provide cost-saving procedures.

New Law: The Commission sponsored Senate Bill 299 (Chapter 342, Stats. 2001) which, among other things, revised Education Code section 44002 to clarify that the definition of "credential" includes a certificate of clearance and a waiver. The definition of "credential" in section 80300(g) has been revised to include certificates of clearance and waivers as part of the definition of "credential" in order to align the regulation with current law.

SB 299 also clarified the circumstances under which the Committee of Credentials may commence an investigation. Currently, the Committee may commence an investigation under specified circumstances, including, but not limited to, notice from the employer of a credential holder that the credential holder has been suspended for more than 10 days, or has otherwise left employment because of an allegation of misconduct. SB 299 clarified that the Committee may initiate an investigation if a credential holder was placed on unpaid administrative leave for more than 10 days or for any other departure of the employee while allegations of misconduct are pending. In order to align the regulation with current law, section 80303

has been revised to include unpaid administrative leave for more than 10 days or for any other departure of the employee while allegations of misconduct are pending as a basis for the Commission to initiate an investigation.

Appellate Court Decision: Section 80307 currently allows credential holders and applicants, following commencement of an investigation, to discover copies of all writings in their file, unless privileged, without redaction. Under the Information Practices Act, personal information disseminated by a state agency is limited. In *Cross v. CTC, et al.*, 111 Cal.App.4th 1001 (2003) the court held that section 80307 is invalid as it is overbroad and in conflict with the IPA.

Education Code section 44244, subdivision (a), requires disclosure of the ". . . portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be open to inspection or copying. . ." Disclosure is limited to the basis of the allegations of misconduct, and does not mandate that "all writings" be discovered, as section 80307 currently requires.

Since section 80307 requires that "all writings" be disclosed, the court found that section 80307 conflicts with the IPA by requiring disclosure of personal information in a credential holder's file that is not necessary to carry out the Commission's duties under Education Code section 44244. Section 80307 has been revised to reflect the court's finding that it conform to Education Code section 44244 and the IPA.

Technical Changes: Section 80300 includes definitions of various terms, with subsection (k) defining "formal review" as "a meeting or hearing held pursuant to Education Code section 44244." Since Education Code section 44244 does not authorize a hearing, this regulation has been revised to reflect the law.

Section 80303 requires the Committee to investigate any superintendent who fails to file reports under this section. This language has been revised to allow the Committee of Credentials to investigate the more egregious violations, and not mandate the investigation of technical violations, such as failing to file the reports within 30 days.

Section 80310 currently states that meeting notices, also known as formal review, will be sent via certified mail, return receipt requested. Education Code section 44244 requires notification by registered mail when the Committee of Credentials has made a recommendation and does not require special mailing procedures at other times. The Commission could send meeting notifications via regular mail, and still be in compliance with the Education Code. The California Code of Civil Procedure, section 1013(a), codifies the sending of notices by regular mail and is followed by other

states, as well as by the federal government. Section 80310 has been revised to allow implementation of a valid form of legal notification that will result in substantial savings in postage and labor costs to the Commission. This change will result in a savings of approximately \$3,000 per year.

Currently, section 80310 states that meeting notices will be sent to the address of record. It is the responsibility of the credential holder or applicant to notify the Commission of any change of address. At times, Commission staff can obtain the last known address via Department of Motor Vehicle or court records, or through other means. In order to help ensure meeting notices are received in a timely manner, section 80310 has been revised to allow the Commission, in its discretion, to send meeting notices to the last known address, as well as to the address of record. Section 80310 has also been amended to include a reminder to credential holders and applicants that it is their responsibility to keep address records up to date.

Section 80310 currently states that the notice of the Committee of Credentials' recommendation and the Confidential Investigative Report shall be sent to all known employers. Pursuant to Education Code section 44242.5(e)(2), this section has been amended to indicate that the recommendation and report shall be sent to all known educational employers only.

Section 80412 refers to the "Commission for Teacher Preparation and Licensing" and lists an outdated address for the Commission. This section has been revised to reflect the Commission's current name. In keeping with other state agency-promulgated regulations, the Commission's address will not be listed in the regulation.

Summary of Proposed Changes

Section 80303: Staff is proposing that the definition of "credential" be expanded to include certificates of clearance and waivers, and to delete the improper term "hearing" from the definition of "formal review."

Section 80303: Staff is proposing that the regulation be changed to clarify when the Committee of Credentials may commence an investigation upon notice from the employer of a credential holder that there has been a change in employment status while allegations of misconduct are pending, and to make investigations of reporting violations discretionary, instead of mandatory.

Section 80307: Staff is proposing that the scope of disclosure of information while an investigation is in progress be defined.

Section 80310: Staff is proposing that the regulation be changed to allow meeting notices to be sent via regular mail rather than certified mail, return receipt requested. Staff is also proposing that the regulation be changed to clarify that the notice of the Committee of

Credentials recommendation and Confidential Investigative Report will be sent to all known educational employers, not all employers.

Section 80412: Staff is proposing that the regulations be updated with the Commission's current name and that the outdated address be deleted.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Regulations: None.

DISCLOSURES REGARDING THE PROPOSED ACTIONS

The Commission has made the following initial determinations:

Mandate to local agencies or school districts: None.

Other non-discretionary costs or savings imposed upon local agencies: None.

Cost or savings to any state agency: Commission savings of approximately \$3,000 on a yearly basis.

Significant effect on housing costs: None.

Significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 175900) of the Government Code.

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment regarding the creation or elimination of jobs in California (Government Code section 11345.3(b)): The Commission has made an assessment that the proposed amendments to the regulation would not (1) create nor eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: The Commission has determined that the proposed amendment to the regulations does not affect small businesses. The proposed amendments to Title 5, California Code of Regulations, only impact the way that the Commission on Teacher Credentialing imposes discipline on credential holders. Thus, there is no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

The Commission must determinate that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out

the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or small businesses than the proposed action. Interested individuals may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON/FURTHER INFORMATION

General or substantive inquiries concerning the proposed action may be directed to Kim Hunter by telephone at (916) 445-0243 or in writing to Kim Hunter, California Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, CA 95814. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. This information is also available on the Commission's website at www.ctc.ca.gov. In addition, all of the information on which this proposal is based is available for inspection and copying.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of regulations, and the initial statement of reasons.

MODIFICATION OF PROPOSED ACTION

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non-substantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, after the public hearing. When it is available, it will be placed on the Commission's website at www.ctc.ca.gov or a copy may be obtained by contacting Kim Hunter at (916) 445-0243.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout format can be accessed through the Commission's website at www.ctc.ca.gov.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 210, 215, 219 and 220, Fish and Game Code, and to implement, interpret or make specific Sections 11, 35, 48, 62, 200-202, 203.1, 205-210 and 215-222 of said Code, proposes to amend Sections 2.09, 2.10 and 5.00, renumber Section 1.71 to 1.70 and add new Section 1.71, Title 14, California Code of Regulations, relating to Fishing Methods Restrictions.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations specify that for rivers and streams the maximum hook gap size is $\frac{3}{4}$ -inch. Single hooks do not have a gap restriction but the shank cannot exceed 2 inches. There are no hook-size restrictions for Delta waters, lakes and reservoirs, or the Colorado River.

In addition, current regulations define the northern boundary of the Delta as Highway 80. The use of the term Highway 80 is confusing because it does not specify either Interstate 80 or Business 80. A clear definition of the Delta is important because gear restriction regulations are different for areas within the Delta and areas outside of the Delta. In 2003, the eastern boundary of the Delta was relocated from Highway 99 to Interstate 5 to incorporate river and stream gear restrictions in the lower Mokelumne River. Subsequent investigations by enforcement staff have shown that this boundary change was not necessary.

The Department is proposing to replace the two-inch maximum shank length for single hooks in rivers and streams with a maximum hook-gap size of one inch. The maximum gap for multiple hooks in rivers and streams remains at $\frac{3}{4}$ -inch. In the Delta, the Department is recommending a one-inch maximum gap for single hooks and a $\frac{3}{4}$ -inch maximum gap for multiple hooks. These hook-gap restrictions will eliminate some of the larger hooks used to illegally snag salmon while not impacting the traditional gear used by striped bass and sturgeon fishers.

The Department is also proposing to relocate the definition of the Delta to a separate section within the chapter on definitions, from the current location in Section 5.00, Black Bass. The new location will be easier for the reader to find the Delta definition. The current Section 1.71 requires renumbering to Section 1.70 but is otherwise unchanged. The new Section 1.71 will contain the Delta definition.

The Department is also proposing to clarify the northern boundary of the Delta by indicating the correct highway names for Interstate 80 and Highway Business 80 instead of Highway 80. The Department is also proposing to relocate the eastern boundary of the Delta from Interstate 5 to its former location, Highway 99, because this proposal contains hook-size restrictions for Delta waters that will provide protection for salmon. This adjustment will simplify black bass regulations and enforcement while continuing to provide adequate protection for Mokelumne River salmon.

This proposal also includes eliminating an obsolete reference in Section 2.09 that states "other devices defined in Section 2.10 as unlawful to use". The current and proposed Section 2.10 no longer contains the referenced device.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Beach Resort, Bay View Room, 2600 Sand Dunes Drive, Monterey, California on December 3, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 24, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than December 3, 2004, at the hearing in Monterey, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. **Ed Pert, Department of Fish and Game, phone (916) 445-3616 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond

the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation clarifies existing regulations, and adds additional fishing gear restrictions to protect salmon and steelhead. These regulations changes are unlikely to have negative impacts on businesses.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861(c), and 6750 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 6653, 8420(e), and 8500 Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code, proposes to Repeal Sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.42, 27.45, 27.50, 27.51, and 630.5 and Amend Sections 29.05, 29.40, 30.00, 120.7, 122, 123, 149, 165, 180, 630, 632, and 747, Title 14, California Code of Regulations, relating to Marine Protected Areas.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing regulations establish marine protected areas (MPAs) under a variety of designations and in a variety of locations in Title 14 of the California Code of Regulations. Other existing regulations refer to these same existing MPAs and/or MPA designations. As required by the Marine Managed Areas Improvement Act (MMAIA, Stats. 2000, ch. 385) the proposed regulation will reclassify existing MPAs designated in sections 27.20 through 27.51, 630, and 630.5 of Title 14 of the California Code of Regulations (Title 14) and sections 10801, 10900 through 10913, and 10932 of the Fish and Game Code (FGC) along

with State Park Units with marine or estuarine subtidal components listed in Chapter 10 of Division 3 of Title 14.

The proposed action will move MPAs designated in Title 14 from their current sections, add them to Section 632, and repeal the existing sections (except those MPAs currently in Section 632) to facilitate understanding and eliminate unnecessary duplication. The proposed action will incorporate those MPAs designated in the FGC to Section 632 of Title 14. The proposed action will clarify the boundary descriptions and existing regulations for each MPA, **without** altering the existing regulations or boundaries. The proposed action will change the names of certain areas in addition to their classification to either clarify their physical location or simplify the name. The proposed regulation will additionally rename the existing Point Loma Reserve (Title 14, Section 27.50) as the "Mia J. Tegner State Marine Conservation Area" and the existing Newport Beach Marine Life Refuge as the "Robert E. Badham State Marine Park".

The proposed regulation will add the general regulations for State Marine Parks to Section 632. The proposed regulation will modify references to MPAs found in sections 29.05, 29.40, 30.00, 120.7, 123, 165, 180, and 747 of Title 14 to comply with the new naming system. Editorial changes are also proposed to improve the clarity and consistency of the regulations and typographical errors found in these sections will be corrected. This includes clarifying that transit through existing MPAs with catch onboard and gear stowed is allowed.

Existing regulations found in Section 123 of Title 14 allow for commercial lobster, sea cucumber, crab, and sea urchin, permit holders to operate in the area between the high tide mark and 1,000 feet beyond the low tide mark without possessing a Tidal Invertebrate Permit. The Tidal Invertebrate Permit requirements include prohibitions of take in certain existing classifications of MPAs. The exemption from the Tidal Invertebrate Permit requirement does not exempt the above fisheries from the other take prohibitions found in Section 123. The proposed regulations will add a statement to sections 122 (lobster permits) and 180 (trap permits) indicating this and noting the other provisions of Section 123 still apply.

Existing policy permits commercial market squid permit holders to operate without a Tidal invertebrate Permit as well, though this exemption is not currently listed in Section 123. The proposed regulations will add this exemption to Section 123 and add a statement to Section 149 noting the exemption. Editorial changes are also proposed to improve the clarity and consistency of the regulations in Section 123. All of the above changes are summarized in Table 2 below.

Table 2. Summary of proposed changes.

Section	Summary of Changes
27.20	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.25	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.30	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.35	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.40	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.42	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.45	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.50	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632. Rename as the "Mia J. Tegner State Marine Conservation Area".
27.51	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
29.05	Amend MPA name references and designations, add clarifications, and fix typographical errors.
29.40	Amend MPA name references and designations, add clarifications, and fix typographical errors.
30.00	Amend MPA name references and designations and add clarifications
120.7	Amend MPA name references and designations, add clarifications, and fix typographical errors.
122	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
123	Amend MPA name references and designations, add clarifications, and fix typographical errors.
149	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
165	Amend MPA name references and designations and add clarifications.
180	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
630	Remove existing fully marine areas and move to Section 632, leave areas with a land component but add their marine component to Section 632. Clarify language and add boundary descriptions in Section 632.
630.5	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
632	Add all existing MPAs to this section using new classification system, add clarifying language for their regulations and boundary descriptions, and fix typographical errors.
747	Add new designations to list for guidelines for civil penalties for consistency with new naming system.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the James W. Kellogg Training Center, 935 Detroit Avenue, Concord, California on October 21, 2004 at 10:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in The Beach Resort, The Bay View Room, 2600 San Dunes Drive, Monterey, California on December 3, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 24, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than December 3, 2004, at the hearing in Monterey, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, Califor-

nia 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. **Patricia Wolf, Department of Fish and Game, Marine Region, (562) 342-7108**, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person

interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action does not change any existing regulations or restrictions within MPAs. By clarifying the regulations, classifications, and boundary descriptions, the proposed action may enhance compliance and public understanding of these areas.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 309 and 12155.5, of the Fish and Game Code, and to implement, interpret or make specific Sections 309, 4340, 4754, 7852.2, 8254.7, 8280.4, 8422, 8423.5, 8562, 8569, 12154, 12155, 12155.5, and 12156, of said Code, proposes to add Section 745.5, and amend Section 746, Title 14, California Code of Regulations, relating to Revocation or Suspension of Hunting or Sport Fishing Privileges.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

AB 1420, Chapter 291, Statutes of 2003 requires the Fish and Game Commission to adopt regulations and procedures governing the revocation or suspension of hunting or sport fishing privileges. This regulation will allow the commission to consider the suspension or revocation of sport hunting and fishing licenses in a similar manner to commercial fishing licenses.

In 1998, the Legislature granted the commission the authority to revoke or suspend commercial fishing privileges after notice and opportunity for a hearing (section 7857, Fish and Game Code). Prior to this, there were a variety of conditions under which commercial fishing licenses and permits could be suspended or revoked, much like the current situation with sport hunting and fishing licenses.

Under current law the department and the commission have the authority to revoke or suspend trapping or recreational hunting and fishing license privileges only if the person is convicted of three violations in a five-year period regardless of the nature of the violation. There is no authority to revoke or suspend the privilege granted by these licenses in circumstances involving the commission of only a single offense even if it is especially damaging. Single

violations that are particularly damaging include those involving large overlimits, big game mammals, fully protected birds, mammals, or fish, specially protected mammals, and species listed as threatened or endangered.

Other instances in which a single conviction is damaging is when a person is allowed to plead to a single violation even though multiple violations may have been committed and charged. The types of violations frequently involved in such cases can be particularly damaging because they include conspiracy to: take fish or wildlife out-of-season, take animals for only a specific portion of the animal (large antlers, gall bladders, claws, talons, etc.), take during closed hours, take by cruel methods, take for commercial purposes, etc.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at The James W. Kellogg Training Center, 935 Detroit Avenue, Concord, California on Friday, October 22, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in The Beach Resort, Bay View Room, 2600 San Dunes Drive, Monterey, California on December 3, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 30, 2004, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than December 3, 2004 at the hearing in Bridgeport, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916)653-4899. Please direct inquiries to Robert R. Treanor or Jon D. Snellstrom at the preceding address or phone number. Leslie Laurance, Department of Fish and Game, phone (916) 657-4607, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
There is expected to be a slight increase in the number of people who lose their license privileges as a result of this regulatory action which may result in decreased revenue for businesses that sell outdoor equipment, supplies, and related services. However, any such impact is expected to be negligible.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/ Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

**TITLE 27. CALIFORNIA
INTEGRATED WASTE
MANAGEMENT BOARD**

NOTICE OF PROPOSED RULEMAKING

Title 27.	Natural Resources
Division 2.	California Integrated Waste Management Board
Chapter 1.	General
Article 1.0	Purpose Scope and Applicability of this Subdivision
Section 20070.	Combined CIWMB and SWRCB Federal Subtitle D Research, Development, and Demonstration Permits

PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (CIWMB) proposes to amend Title 27, California Code of Regulations (CCR), Division 2, Chapter 1, by adding: Article 1, Section 20070, Title 27, CCR, Division 2, Chapter 4, Subchapter 3, Article 2, Section 21569, and Title 27, CCR, Division 2, Chapter 4, Subchapter 4, Sections 21805 and 21835.

The proposed regulations would incorporate Research, Development, and Demonstration (RD&D) Permit flexibility in California's approved Subtitle D Program. RD&D Permits would allow for site-specific variances from certain Subtitle D criteria under specified conditions to implement innovative Municipal Solid Waste (MSW) landfill technologies.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the CIWMB. **The written comment period for this rulemaking ends at 5:00 p.m. on November 30, 2004.** The CIWMB

will also accept oral and written comments during the public hearing described below. Please submit your written comments to:

Scott Walker
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025 MS-15
Sacramento, CA 95812-4025
Phone: (916) 341-6319
FAX: (916) 319-7469
e-mail: swalker@ciwmb.ca.gov

PUBLIC HEARING

A public hearing to receive comments on the proposed rulemaking will be scheduled for December 6, 2004. The hearing will be held in the Sierra Hearing Room (Second Floor) at the Joe Serna, Jr. Cal/EPA Building, 1001 I Street, Sacramento, California. The hearing will begin at 10:00 a.m. and conclude after the public gives all testimony. The CIWMB requests that persons, who make oral comments at the hearing, submit written copy of their testimony at the hearing. The Coastal Hearing Room is wheelchair accessible.

INFORMATIVE DIGEST

The Integrated Waste Management Act (Act), Public Resources Code (PRC) § 40000 et. seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and state waste processing and disposal.

PRC section 40502 requires the California Integrated Waste Management Board (CIWMB) to adopt rules and regulations including minimum standards for solid waste handling and disposal. PRC section 43020 requires the CIWMB to not include any requirements that are already under the authority of the State Air Resources Board for the prevention of air pollution or of the State Water Resources Control Board (SWRCB) for the prevention of water pollution. Joint regulations of the CIWMB and SWRCB pertaining to solid waste disposal sites are consolidated in Title 27, California Code of Regulations (27 CCR), Division 2, Subdivision 1.

Pursuant to PRC 40508, CIWMB is designated as the state solid waste management agency for all purposes stated in the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.) and any other federal act heretofore or hereafter enacted affecting solid waste. United States Environmental Protection Agency (USEPA) regulations governing municipal solid waste landfills are in Title 40, Code of Federal Regulations (40 CFR), Part 258 (Resource Conservation and Recovery Act (RCRA) Subtitle D)). USEPA has determined pursuant to section 4005 of RCRA, that California's municipal

solid waste landfill permit program is adequate to ensure compliance with 40 CFR 258 criteria (Federal Register Volume 58, No. 193, October 1, 1993).

USEPA issued a final rule effective April 21, 2004 to allow approved Subtitle D Program States such as California the flexibility and authority to issue Research, Development, and Demonstration (RD&D) Permits (<http://www.epa.gov/epaoswer/non-hw/muncpl/mswlficr/index.htm>). RD&D Permits provide for site-specific variances under specified conditions and controls from certain Subtitle D criteria necessary to implement innovative MSW landfill technologies, provided that the owner/operator demonstrates that compliance with the variance will not increase risk to human health and the environment over the standard requirements. The specific variances allowed are under SWRCB jurisdiction and include the following criteria: run-on control systems in 40 CFR 258.26(a)(1) (27 CCR 20365), liquids restrictions in 40 CFR 258.28(a) (27 CCR 20200(d) and 20340), and final cover criteria in 40 CFR 258.60(a)(1), (a)(2), and (b)(1) (27 CCR 21090).

USEPA requires approved Subtitle D Program states to adopt RD&D Permit authority in order to issue RD&D Permits (<http://www.epa.gov/epaoswer/non-hw/muncpl/mswlficr/rd&d-fs.pdf>). The proposed regulations would incorporate RD&D Permit flexibility in California's approved Subtitle D Program under jurisdiction of both the CIWMB and SWRCB.

POLICY STATEMENT OVERVIEW

The CIWMB has determined that incorporating federal flexibility in the State's Subtitle D Program is of potential benefit to the citizens of California and solid waste management. Specifically, the CIWMB has determined that the proposed regulations to incorporate federal RD&D Permit authority in an environmentally sound manner may help foster innovative solid waste landfill technologies.

PLAIN ENGLISH REQUIREMENTS

CIWMB staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Section 11342.580 and 11346.2(a)(1). The proposed regulations are considered non-technical and are written to be easily understood by those parties that will use them.

AUTHORITY AND REFERENCES

PRC Sections 40502, 43020, and 43021 provide authority for these regulations. The purpose of the proposed regulations is to implement, interpret, and make specific PRC Sections 40053, 43020, and 43021.

FEDERAL LAW OR REGULATIONS MANDATE

The proposed regulations would incorporate specific federal requirements allowed but not mandated by United States Environmental Protection Agency (U.S. EPA) in Title 40, Code of Federal Regulations (40 CFR), Part 258 (Resource Conservation and Recovery Act (RCRA) Subtitle D)). As an approved state under Subtitle D, the State of California has the authority to promulgate such regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

CIWMB staff has made an initial determination that the proposed regulations will result in no costs or savings to any state agencies and no costs to any school districts that are required to be reimbursed under part 7 (commencing with section 17500) of Division 4 of the Government Code, no other non-discretionary costs or savings on local agencies or school districts and no costs or savings in federal funding to the state.

CIWMB staff has determined that the proposed regulations impose a mandate on local agencies that serve as CIWMB certified local enforcement agencies. The mandate does not require state reimbursement because the agencies are authorized by PRC Sections 43213 and 44006 to charge a fee to recover the costs of performing those services.

EFFECT ON HOUSING COSTS

CIWMB staff has made an initial determination that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

CIWMB staff has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting California businesses including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

CIWMB staff has made an initial determination that the regulations would not have any significant economic impact on small businesses. The regulations would impact the solid waste landfills that propose and implement Research, Development, and Demonstration (RD&D) Permit projects. Due to the capital investment required, few small businesses establish and operate solid waste landfills. As such these regulations will not affect small business in that no small business is required to comply with the regulations, none is required to enforce the regulations, and none derives a benefit nor incurs a detriment from the enforcement of the regulations. If a small

business were to establish a solid waste landfill that proposes and implements an RD&D Permit project it would be subject to these regulations.

IMPACTS ON JOBS/BUSINESSES

CIWMB staff has made an initial determination that the costs and/or savings associated with these regulations are not significant enough to result in the creation or elimination of jobs, occupations, or businesses or the expansion of existing California businesses.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

CIWMB staff has analyzed the economic impact of the proposed action and made an initial determination that there are no cost impacts on representative private persons or businesses.

CONSIDERATION OF ALTERNATIVES

The CIWMB must determine that no reasonable alternative considered by the CIWMB or that has otherwise been identified and brought to the attention of the CIWMB would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The CIWMB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed to:

Scott Walker
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025 MS-15
Sacramento, CA 95812-4025

Phone: (916) 341-6319
FAX: (916) 319-7469
e-mail: swalker@ciwmb.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Michael Wochnick
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025 MS-15
Sacramento, CA 95812-4025

Phone: (916) 341-6318
FAX: (916) 319-7334
e-mail: mwochnic@ciwmb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The CIWMB will have the entire rulemaking file, and all information upon which the proposed regulations are based, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons and the economic impact statement. Copies may be obtained by contacting Scott Walker at the address, e-mail, or telephone number listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access the CIWMB's website at <http://www.ciwmb.ca.gov/Rulemaking/LandfillDemo/>.

Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may call the contact persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The CIWMB may adopt the proposed regulations substantially as described in this notice. If the CIWMB makes modifications which are sufficiently related to the proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the CIWMB adopts the regulations as revised. Requests for the modified text should be made to the contact person. The CIWMB will mail any modified text to all persons who testify at a public hearing; all persons who submit written comments at a public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The CIWMB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

**TITLE, CONTROL #2004-0426, ADOPTING/
AMENDING SECTION 1000 IN TITLE 28,
CALIFORNIA CODE OF REGULATIONS**

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (Director) proposes to adopt regulations under the Health Care Service Plan Act of 1975 (Act) relating to the Department of Managed Health Care's Conflict of Interest Code by adopting/amending section 1000 in Title 28, California Code of Regulations. Before

undertaking the action, the Director will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may request in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the Department of Managed Health Care's (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative may submit written statements, arguments or contentions (hereafter referred to as comments) relevant to the proposed regulatory action by the Department. Comments must be received by the Office of Legal Services, Department of Managed Health Care, by 5 p.m. on November 29, 2004. Comments may be transmitted by regular mail, FAX or email:

Email: regulations@dmhc.ca.gov

Mail Delivery: Regulation Coordinator
Department of Managed Health Care
Office of Legal Services
980 9th Street, Suite 500
Sacramento, CA 95814

Fax: (916) 322-3968

Please note, if comments are sent via email or fax, there is no need to send the same comments by mail delivery. All comments, including email, fax transmissions or mail delivery should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited. Please address all comments to the Department of Managed Health Care, Office of Legal Services.

1. Inquiries regarding the substance of the proposed regulation described in this notice may be directed to Nancy Pheng, Law Clerk, at (916) 322-6727.
2. All other inquiries concerning the action described in this notice may be directed to Elaine Paniewski, Staff Service Analyst, at (916) 322-6727.

CONTACTS

Please identify the action by using the Department's regulation control number and title, #2004-0426, section 1000, title 28, in any of the above inquiries.

AVAILABILITY OF DOCUMENTS

Materials regarding the proposed regulations (including this public notice, the proposed regulations, and the Initial Statement of Reasons) are available via the internet. The documents may be accessed at <http://www.hmohelp.ca.gov/library/regulations/> under the heading Proposed Regulations. As required by the Administrative Procedure Act, the Department's Office of Legal Services maintains the rulemaking file. At the present time, the rulemaking file consists of the text of the regulations, the initial statement of reasons, and the notice. The rulemaking file is available for public inspection at the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Suite 500, Sacramento, CA 95814. To view the file, please call to make an appointment: (916) 322-6727.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Health and Safety code sections 1344 and 1346 vest the Director with the power to administer and enforce the provisions of the Act.

California Health and Safety Code section 1344 mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter. In addition, the Director may honor requests from interested parties for interpretive opinions.

California Health and Safety Code section 1346 vests in the Director the power to administer and enforce the Act, including but not limited to recommending and proposing the enactment of any legislation necessary to protect and promote the interests of plans, subscribers, enrollees, and the public.

Government Code section 87300 requires each agency to adopt and promulgate a Conflict of Interest Code. Government Code section 87306 requires every agency to amend its Conflict of Interest Code when change is necessitated by changed circumstances, such as the creation of a new position that must be designated. An amendment is required at this time because a new position of "Auditor" has been created.

The new position of Auditor must be added to the list of Designated Positions included in the Appendix to section 1000. Auditors are designated as filers under the Conflict of Interest Code because they participate

in sensitive financial reviews of all health plans regulated by the Department and participate in decisions about actions to be taken based on the results of the financial examinations. The proposed amendment to section 1000 reflects the addition of this new position to the Conflict of Interest Code, as required by Government Code section 87306.

AUTHORITY

Health and Safety Code section 1344; Government Code sections 87300 and 87306

REFERENCE

Government Code sections 87300–87302

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulation(s) should be addressed to Elaine Paniewski, Staff Service Analyst, at (916) 322-6727. The Director will accept written, faxed or e-mailed comments on the modified regulation(s) for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Elaine Paniewski, Staff Service Analyst, at (916) 322-6727 or available on the internet at <http://www.hmohelp.ca.gov/library/regulations/> under the heading Proposed Regulations.

ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified or brought to its attention, would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period.

FISCAL IMPACT STATEMENT

- Mandate on local agencies and school districts: None
- Cost or Savings to any State Agency: None

- Direct or Indirect Costs or Savings in Federal Funding to the State: None
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None
- Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None
- Other non-discretionary cost or savings imposed upon local agencies: None

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations will have no impact on housing costs.

The Department has determined that the regulations do not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342(h)(2).

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs within the State of California.

The Department has determined that the regulations will not significantly affect the creation of new businesses, or the elimination of existing businesses within the State of California.

The Department has determined that the regulations will not significantly affect the expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses currently doing business within the State of California.

FINDING REGARDING REPORTING REQUIREMENT

Government Code section 11346.3(c) provides as follows:

“No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.”

All reporting requirements included in these regulations do apply to businesses because the Department

has determined that the regulations are necessary to maintain the health, safety and welfare of the people of the State of California.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. Initial Statement of Reasons
2. Text of proposed regulations
3. All information upon which the proposal is based (rulemaking file)

This information is available by request at the Department of Managed Health Care, Office of Legal Services, 980 9th St., Sacramento, CA 95814, or on our website at <http://www.hmohelp.ca.gov/library/regulations/>, under the heading, Proposed Regulations.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**Fish and Game Code Section 2080.1
Tracking Number 2080-2004-015-05**

PROJECT: Irvine Ranch Water District—
Carlson Marsh Drainage Modification

LOCATION: City of Irvine, California,
Orange County

NOTIFIER: LSA Associates, Inc., representing
Irvine Ranch Water District

BACKGROUND

The proposed project consists of the construction and modification of earthen berms, low flow channels, weirs, culverts, removal of exotic invasive vegetation, and restoration of riparian habitat within Carlson Marsh (“Marsh”), for the purpose of flood control, vector control, and maintenance of riparian vegetation. The implementation of the project will allow for circulation of water through the Marsh in the dry season, to drain ponded water after a storm event, and to control water supply within the Marsh. Carlson Marsh encompasses approximately 60 acres of the northwestern portion of the 580-acre San Joaquin Marsh and extends from Michelson Drive south to MacArthur Boulevard. The Irvine Ranch Water District (“IRWD”) owns and manages the 336-acre portion of the San Joaquin Marsh northeast of Campus Drive, which is generally bounded by Michelson Drive to the north, San Diego Creek to the east, Carlson Avenue to the northwest, and Campus Drive to the southwest, within the City of Irvine, County of Orange.

According to the biological opinion issued by the U.S. Fish and Wildlife Service (“Service”), the project will permanently impact approximately 0.89 acre of native riparian habitat, including 0.76 acre of willow woodland and 0.13 acre of mulefat. The project will also result in temporary impacts to 1.67 acres of native vegetation, including approximately of 1.33 acres of willow woodland, 0.05 acres of mulefat scrub, 0.17 acres of mixed mulefat and coastal sage scrub, and 0.11 acres of ruderal alkali marsh. In addition, the applicant proposes to restore 1.57 acres of disturbed riparian habitat to willow woodland and mulefat scrub habitat (roughly 80% to 20% respectively). The project’s impacts are based on total project footprint. However, due to the narrow linear nature of the proposed project, the berms and channels will be routed to avoid and minimize impacts to individual trees and areas of established habitat. The project proponent estimated that about fifty-percent of the above acreage will involve the full removal of trees and mulefat. “Full removal” is defined as the removal of a large portion of the canopy and/or trunks or limbs larger than 10 inches in diameter. The successful implementation of the project as proposed will have a net increase in least Bell’s vireo habitat by the restoration of disturbed riparian habitat to approximately 2.08 acres of willow woodland/mulefat scrub.

The Service found that the willow woodland and mulefat scrub habitat and adjacent coast sage scrub habitat affected by the project supports the least Bell’s vireo (*Vireo bellii pusillus*). The least Bell’s vireo is listed as an endangered species under the federal Endangered Species Act and the California Endangered Species Act (Fish & G. Code, § 2050 et seq. (“CESA”). Thus, this action would adversely affect the least Bell’s vireo and its habitat. On August 30, 2004, the Service issued Biological Opinion #FWS-OR-3712.3, describing the project actions and setting forth measures to mitigate impacts to the least Bell’s vireo and its habitat. On September 3, 2004, the Director of the Department received a notice from LSA Associates, Inc. on behalf of Irvine Ranch Water District (IRWD) seeking a determination pursuant to section 2080.1 of the Fish and Game Code that the federal biological opinion was consistent with CESA.

DETERMINATION

After reviewing the above-referenced biological opinion and other relevant documents, the Department has determined that Biological Opinion #FWS-OR-3712.3 is consistent with CESA as to the least Bell’s vireo because the project and mitigation measures meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) for authorization of incidental take of species protected under CESA. Measures incorporated into the project and described in the biological opinion require the following:

1. Temporary impacts to 1.33 acres of willow woodland, 0.05 acre of mulefat scrub, and 0.17 acre of mixed mulefat and coastal sage scrub will be restored. Approximately 1.57 acres (1.55 per #12 of Biological Opinion, ("B.O.)) of arundo described as adjacent to the proposed project in the B.O. will be removed and restored as native woody riparian vegetation (willow woodland and mulefat scrub). In addition, 1.40 acres of temporary impact to non-native riparian/ruderal vegetation in the project footprint will be removed and restored with native riparian vegetation. The restored habitat will contain approximately the same percentage of willow woodland and mulefat scrub as the impacted habitat (roughly 80% and 20%, respectively). Approximately 0.55 acre of arundo will be removed and restored as open water habitat.
2. Restoration will be completed as soon as possible following project completion. Removal of arundo and planting in the areas that contained arundo will be completed prior to March 15, 2005. To the greatest extent practicable, construction and subsequent site preparation and planting will also be conducted prior to March 15, 2005. If the project has not been completed by March 15, 2005, restoration will be implemented on those portions of the project that have been completed.
3. To the maximum extent practicable, project-related activities will occur from September 16 through March 14, which is outside the least Bell's vireo breeding season.
4. A biological monitor will be present during all activities involving removal of vegetation to ensure that impacts to wetland and riparian habitat do not exceed the limits of grading and to minimize the likelihood of inadvertent impacts to vireo and other wildlife species.

Pursuant to section 2080.1 of the Fish and Game Code, incidental take authorization under CESA will not be required for incidental take of least Bell's vireo as a result of the project, provided IRWD carries out the project as described in the biological opinion and complies with all terms and conditions therein. If IRWD makes any substantive changes to the project as described in the biological opinion, including changes to the mitigation measures, or if the Service amends, replaces, or revokes the biological opinion, IRWD will be required to obtain a new consistency determination or a CESA incidental take permit from the Department.

The request for a consistency determination also requested a finding that the Service's biological opinion was consistent with CESA as to the willow flycatcher. The biological opinion did not authorize

take of willow flycatcher, and therefore that species is not covered by this consistency determination.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1 Tracking Number 2080-2004-014-03

PROJECT: Mallory Ridge Vegetation Management Project
LOCATION: Contra Costa County
NOTIFIER: Contra Costa Water District

BACKGROUND

The Contra Costa Water District (CCWD) plans a prescribed burn of 64.75 acres to reduce the amount of vegetation and create a defensible fire break above the Los Vaqueros Reservoir. The action would result in incidental take of the Alameda whipsnake (*Masticophis lateralis euryxanthus*) through fire, fire control activities, other fuel reduction activities, and loss of habitat. The Alameda whipsnake is a species listed as threatened under the California Endangered Species Act, Fish and Game Code section 2050, *et seq.* (CESA).

The Department of Fish and Game (Department) issued a consistency determination for this project pursuant to section 2080.1 of the Fish and Game Code on July 19, 2002, finding that a biological opinion issued by the U.S. Fish and Wildlife Service for biological studies to be carried out in conjunction with the Mallory Ridge burn and prescribed burns planned by other agencies in whipsnake habitat was consistent with CESA. On August 30, 2004, the Department received notification from CCWD that the project description and federal biological opinion had both been amended. CCWD requested a new determination that the revised biological opinion (No. 1-1-04-F-0210, amending No. 1-1-02-F-0064) is consistent with CESA. A single change was made in the project: instead of conducting the prescribed burns in phases over four years, the area is proposed for a single burn between November 1 and March 15. The change is necessitated by CCWD's inability to carry out burns in either of the past two years. The total area that will be cleared by prescribed burn is unchanged, and CCWA will implement all the mitigation measures for the Alameda whipsnake and other species listed under the federal Endangered Species Act that it originally proposed.

DETERMINATION

After reviewing the amended biological opinion and other relevant documents, the Department has determined that Biological Opinion No. 1-1-02-F-0064, as

amended by Biological Opinion No. 1-1-04-F-0210, is consistent with CESA because the project and mitigation measures meet the conditions set forth in Fish and Game Code section 2081(b) and (c) for authorization of incidental take of species protected under CESA. In particular, the Department concludes that burning the entire 64.75 acres in a single effort rather than conducting smaller burns over four years will not alter the overall impacts of the project. Consequently, the measures incorporated into the project and described in the federal biological opinions will minimize and mitigate impacts as required under CESA. These measures include, but are not limited to, the following:

1. CCWD will implement the fuel reduction project according to the Fish and Wildlife Service-approved research protocol and as described in the biological opinion;
2. Burns will take place between November 1 and March 15;
3. CCWD hand crews will avoid rock outcroppings or other potential retreat areas for the whipsnake and will construct fire lines around them;
4. Fish and Wildlife Service-approved biologists will be present at the burn site to conduct a fire crew education program and conduct surveys after burns are completed to locate any dead or injured whipsnakes; and
5. The use of fire-retardant and suppressant chemicals will be restricted to emergencies.

The Department also agrees, as it did in 2002, that the project is likely to provide long-term benefits to the Alameda whipsnake and its habitat by reducing the potential for a catastrophic fire and by promoting and restoring native grassland and open chaparral habitats that Alameda whipsnakes prefer. Further, the Department recognizes the benefit in studies that the Fish and Wildlife Service plans to undertake following this and other burns to assess impacts of these activities on the Alameda whipsnake.

As part of this determination, CCWD will be required to provide the Department's regional headquarters with copies of the reports that were specifically identified in the consistency determination issued July 19, 2002. Those reports shall be provided to the Central Coast Regional Office, P.O. Box 47, Yountville, CA 94599.

Pursuant to section 2080.1 of the Fish and Game Code, authorization under CESA will not be required for incidental take of Alameda whipsnake as a result of the project as revised by the latest federal biological opinion. Any substantive changes to the project as described in the biological opinion, including changes to the mitigation measures, will require the notifier to

obtain a new consistency determination or a CESA incidental take permit from the Department.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

Tracking Number 2080-2004-013-05

PROJECT: Taylor Project

LOCATION: City of Oceanside, San Diego County

APPLICANT: Ken Cablay, Lighthouse Ventures
LLC

BACKGROUND

The proposed project consists of the construction of 28 houses on approximately 13.6 acres of a 30.09-acre parcel at the western end of Sunridge Drive, south of Darwin Drive in the City of Oceanside. The development of the property is consistent with existing zoning for the property. The housing development would be concentrated on the southeast portion of the property, leaving most of the northwest side of the property as open space.

The action will adversely affect 71 thread-leaved brodiaea (*Brodiaea filifolia*) individuals. *Brodiaea filifolia*, is a species listed as endangered under the California Endangered Species Act, Fish and Game Code 2050, *et seq.* (CESA) and threatened under the federal Endangered Species Act. On July 22, 2004, the U.S. Fish and Wildlife Service (Service) issued the third amendment to Biological Opinion # 1-6-03-F-2820R3 describing the project actions and setting forth measures to mitigate impacts to the *Brodiaea filifolia* and its habitat. On August 25, 2004, the Director of the Department of Fish and Game (Department) received a notice from Mr. Ken Cablay of Lighthouse Ventures LLC, seeking a determination pursuant to section 2080.1 of the Fish and Game Code that the biological opinion is consistent with CESA.

The applicant is proposing to compensate for direct effects to thread-leaved brodiaea at a 1:1 replacement ratio. Impacts to approximately 71 of the 1,268 thread-leaved brodiaea individuals on site will be offset through salvaging all of the individuals proposed for impact and transplanting them to the proposed 15.9-acre on-site preserve after October 15, 2004 (the typical onset of the rainy season). An additional component of the project mitigation includes preserving and managing the remaining unimpacted thread-leaved brodiaea (approximately 1,197 individuals) on the on-site preserve in perpetuity.

The applicant will individually finance translocation of thread-leaved brodiaea impacted by the Taylor project, and will provide \$157,500 for seven years of maintenance, monitoring, and reporting during the

establishment period, as well as the cost (\$681,501 non-wasting endowment) for subsequent long-term management. The applicant will provide to the Department a letter of credit for \$157,500 before the end of 2004 to serve as a performance guarantee for the initial seven years of maintenance, monitoring, and reporting. The letter of credit will be in a format approved by the Office of the General Council. The first year that 50% of the translocated plants flower, the guarantee will be reduced by one-third. The next year that 60% of the translocated plants flower, the guarantee will be reduced by another one-third. The final one-third will be released after the translocated plants meet their full success criteria.

Following the initial mitigation, maintenance, and monitoring period, the transplants, as well as the unimpacted thread-leaved brodiaea occurring within the preserve, will be managed as one population. Management of the 15.9-acre preserve will be turned over to a management entity acceptable to the Department. A non-wasting endowment in the amount of \$681,501 will be paid to the Department before the end of 2004. Long-term management of the Taylor preserve, including the thread-leaved brodiaea population, will be funded by the interest that the endowment generates.

DETERMINATION

After reviewing the above-referenced biological opinion and other relevant documents, the Department has determined that Biological Opinion # 1-6-03-F-2820R3 is consistent with CESA because the project and mitigation measures meet the conditions set forth in Fish and Game Code section 2081(b) and (c) for authorization of incidental take of species protected under CESA. Measures incorporated into the project and/or described in the federal biological opinion include the following elements:

1. Approximately 71 individual thread-leaved brodiaea (representing approximately 5 percent of the on-site population) in the area proposed for direct impact will be relocated on-site, to a location within the preserved open space. To ensure that no additional thread-leaved brodiaea are destroyed during the relocation, no thread-leaved brodiaea will be transplanted to an area where it currently exists. The translocation will be done in accordance with a plan approved by the Wildlife Agencies.
2. The portion of the property outside of the development footprint will be preserved in perpetuity as open space. This 15.88-acre area currently consists of 0.54 acre of southern willow scrub, 0.24 acre of mule fat scrub, 1.0 acre of native grassland, 10.3 acres of Diegan coastal sage scrub, 0.1 acre of poison oak chaparral, 1.7 acres of annual grassland, 0.4 acre of eucalyptus woodland, and 0.5 acre of disturbed habitat.
3. Prior to issuance of a grading permit, the applicant will ensure that long-term conservation of the on- and off-site preservation areas will occur through biological conservation easements. The biological conservation easements will be granted to a public or private entity agreed to by the Service and the Department to ensure that the management of the biological resources is implemented.
4. Prior to issuance of a grading permit, the applicant will identify an appropriate natural lands management organization to prepare a management plan that outlines actions that will be taken to manage biological resources on-site in perpetuity. A Property Analysis Record (PAR) or similar analysis will be used to estimate initial start-up costs, and ongoing annual cost, of management activities outlined in the plan. A financial mechanism (e.g., a non-wasting endowment) will be established to ensure that the funding is available to implement the management plan. The natural lands management organization will implement the management plan.
5. An educational document for future residents will be prepared that informs residents of the need to protect sensitive biological resources in the open space area. The document will instruct residents in protective measures such as reducing irrigation runoff, staying out of the open space, avoiding night lighting of the open space, avoiding dumping in the open space, and minimizing domestic cat depredations on gnatcatchers.
6. The applicant will avoid impacts to 1.0 acre of existing native grassland on site, and create 0.78 acre of native grassland in the on-site preserve, where annual grassland currently exists. Additionally, 0.22 acre of native grassland will be restored where impacts were necessary to conduct slope stability analysis (Figure 1). The avoided, created and restored native grassland will be placed in the on-site preserve and will require a plan that is approved by the Service. To avoid additional impacts to thread-leaved brodiaea, native grassland creation will not occur over existing thread-leaved brodiaea populations.
7. The entire perimeter of the project adjacent to the open space will be fenced either by backyard fences or other fencing to limit human intrusion into the open space.
8. Fuel modification zones will be limited to the project footprint, thus, no fuel modification will take place in the preserved wildlife habitat.

9. Construction will be monitored by a biologist to ensure that adjacent sensitive plant populations are protected.
10. Invasive plant species will not be used in landscaping adjacent to conserved habitat areas. Landscape plans for the areas adjacent to the preserve will be reviewed by a qualified biologist to ensure that no invasive plant species are used. A list of prohibited invasive species will be provided in the CC&Rs of the Homeowner's Association.
11. Construction work areas will be delineated and marked clearly in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Employees will strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. A qualified biologist will monitor installation and removal of the fence.
12. All equipment maintenance, staging, and dispensing of fuel, oil, or any other such activities, will occur in designated upland areas identified as impacted by the project. The designated upland areas will be located at least 100 feet from sensitive plant populations. These areas will be kept free of trash that may attract scavengers.
13. Erosion control measures (including silt fencing) will be used to direct runoff away from sensitive plant populations.

Pursuant to section 2080.1 of the Fish and Game Code, incidental take authorization under CESA will not be required for incidental take of *Brodiaea filifolia* as a result of the project, provided Lighthouse Ventures, LLC carries out the project as described in the biological opinion and complies with all terms and conditions therein. If Lighthouse Ventures, LLC makes any substantive changes to the project as described in the biological opinion, including changes to the mitigation measures, or if the Service amends, replaces, or revokes the biological opinion, Lighthouse Ventures, LLC will be required to obtain a new consistency determination or a CESA incidental take permit from the Department.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

CALIFORNIA REGULATORY REGISTER NOTICE ACTION DESCRIPTION FOR GROUNDWATER MONITORING VARIANCE ISSUED BY REGULATORY AND PROGRAM DEVELOPMENT DIVISION FOR

E.I. DUPONT DE NEMOURS AND COMPANY

On September 28, 2004, the Regulatory and Program Development Division of the Department of

Toxic Substances Control (DTSC) issued a variance to the E.I. DuPont de Nemours and Company (Dupont) facility located at 6000 Bridgehead Road, Oakley, California 94561. Authority for this action is contained in Chapter 6.5, Division 20 of the Health and Safety Code, Section 25143.

The variance approval allows reduction in frequency and scope of the groundwater monitoring program for Dupont. Specifically, this variance allows Dupont to a) conduct semi-annual rather than quarterly sampling of designated monitoring parameters at all Article 6 (California Code of Regulations, title 22, Chapter 14 & 15, Article 6) monitoring points; and b) limit annual Appendix IX (California Code of Regulations, title 22, section 66264, Appendix IX) groundwater sampling to designated point of compliance wells, rather than at all Article 6 monitoring points. The variance will alleviate some of the burden posed by the prescriptive Article 6 requirements and allow Dupont to optimize resources on site characterization and remediation that is both appropriate and necessary. For additional information, contact Michael Choe of the Department of Toxic Substances Control, Permit Program Development Section at (916) 322-5308.

FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

(Continuation of California Notice Register 2003, No. 42-Z; and 2004, Nos. 19-Z and 28-Z; and Meetings of August 1 and December 5, 2003; and May 4 and August 27, 2004)

(NOTE: See Updated Informative Digest changes shown in bold face type.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 7071, 7078, 7701, 7708, 7923, 8026, 8425 and 8429.5 of the Fish and Game Code and to implement, interpret or make specific sections 7050, 7070, 7071, 7075, 7078, 7082, 7083, 7086, 7652, 7701, 7708, 7923, 8026, 8081, 8420, 8425, 8429.5 and 8429.7 of said Code, proposes to add sections 53.00, 53.01, 53.02, 53.03, 149.1, 149.2, 149.3, and 149.4, and amend Section 149, Title 14, California Code of Regulations, regarding Market Squid Fishery Management Plan, commercial take of market squid, and market squid restricted access program.

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At the Commission's August 27, 2004 adoption hearing, action was taken to adopt the Market

Squid Fishery Management Plan and implementing regulations, certify the environmental document, and adopt fishery management measures, including a restricted access program for the commercial squid fishery.

While the Commission acted on most components of the proposed regulations of the rulemaking package, it directed the Department to modify the proposed options relating to non-transferable permits. Based on public comment, the Commission indicated that it wished to consider permit qualifying criteria that were not included among the options provided in the Initial Statement of Reasons. This document serves to revise the options for consideration for non-transferable permits, as well as to modify specific sections of the regulatory text following adoption on August 27, 2004, to better capture the intent of the Commission as expressed in its motion. The following items describe the proposed changes to the regulatory text and the remaining decisions to be made by the Commission at its second adoption hearing on December 3, 2004. The Final Statement of Reasons will include all decisions made by the Commission at both meetings.

1. Proposed Subsection (g) of Section 149, Title 14, CCR, Commercial Taking of Market Squid. At the August 27, 2004 adoption hearing, the Commission moved to establish a closure to all squid fishing activity using lights in the Gulf of Farallones National Marine Sanctuary, with the boundaries of the Sanctuary being defined as those that are currently in effect. The action was taken to provide protection to seabird colonies at the Farallon Islands and Point Reyes, and was not intended as a seasonal closure nor a general habitat closure. Modification to the originally noticed regulatory text was needed to reflect these determinations.

2. Subsection (b) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. At the August 27, 2004 adoption hearing, the Commission moved to establish both transferable and non-transferable permit classes for Market Squid Vessel and Brail permits. The regulatory text of this subsection was amended for clarity and specificity with regard to the activities authorized under each class of permit.

3. Subsection (c) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. The text of this subsection required amendment once the Commission specified at the August 27, 2004 adoption hearing that in order to qualify for a future permit of any permit class, the owner must possess a squid permit for the 2004–2005 fishing year. Previous versions of the regulatory text

allowed individuals to qualify for a non-transferable permit without holding a current permit. The language was further clarified to specify that during initial permit issuance, a permit must be placed only on a vessel that was licensed as either a market squid vessel or light boat in the 2004–2005 fishing season, and which must also be the vessel upon which the qualifying catches were made.

4. Subsection (c)(2) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. The text of this subsection outlines the requirements for initial permit issuance for Non-Transferable Market Squid Vessel Permits. At its August 27, 2004 meeting, the Commission specified a requirement that individuals possess a 2004–2005 squid vessel permit in order to qualify for a future permit. In addition, the Commission requested the Department expand the range of qualifying catch criteria based on landings history. Non-Transferable permits were established by the Commission to provide an opportunity for 20-year California fishermen to continue in the squid fishery if they had participated in one or more prior years, pursuant to Section 8101 of the Fish and Game Code.

Additionally, the updated regulatory text will now allow the Commission to require a minimum of [20–75] landings in any one fishing season for non-transferable vessel permit issuance, and to select the years in which that fishing activity must have occurred. The Commission may require that the catches have been made in any single fishing season (April through March of the following year). Only landing receipts dated [between January 1, 1990 and March 31, 2003] or [between January 1, 1998 and March 31, 2003] or [before August 27, 2004] will be counted toward qualification. See Table 1 below for information on the number of anticipated qualifiers under each of these window period options.

Alternatively, the Commission may select initial issuance criteria for non-transferable vessel permits based on catch history that was made over a time period greater than a single season. The Commission may require a minimum of [20–150] landings at any time prior to August 27, 2004. See Table 2 below for information on the number of anticipated qualifiers.

Table 1. Estimated number of fishermen that may qualify for a non-transferable market squid vessel permit based on (1) the possession of an 04/05 market squid vessel permit, (2) the possession of a California Commercial Fishing License for at least 20 years, and (3) having made at least [20–75] landings during any one season as recorded by

their fishing license identification number. Because the Department does not have precise information on 20-year fishermen, and because many vessels are owned by corporations rather than individuals, a range of estimates is provided. While the lowest value in the range reflects the number of individuals that the Department anticipates are 20-year fishermen, a maximum number of potential qualifiers (where the 20-year criteria is not considered) is provided for reference.

Number of Landings in a Single Season	I. 1/1/1998 through 3/31/2003	II. 1/1/1990 through 3/31/2003	III. Prior to 8/27/2004 (No Window Period)
20	6-12	10-17	14-23
33	2	6-11	7-15
40	2	4-8	4-14
50	2	3-6	4-11
75	1	1	1-2

Table 2. Estimated number of fishermen that may qualify for a non-transferable market squid vessel permit based on (1) the possession of an 04/05 market squid vessel permit, (2) the possession of a California Commercial Fishing License for at least 20 years, and (3) having made at least [20-150] total landings prior to August 27, 2004 as recorded by their fishing license identification number. Because the Department does not have precise information on 20-year fishermen, and because many vessels are owned by corporations rather than individuals, a range of estimates is provided. While the lowest value in the range reflects the number of individuals that the Department anticipates are 20-year fishermen, a maximum number of potential qualifiers (where the 20-year criteria is not considered) is provided for reference.

Total Number of Landings	Prior to 8/27/2004 (No Window Period)
20	18-30
33	12-25
40	11-21
50	11-20
75	7-14
100	7-12
125	5-12
150	3-9

5. *Subsection (c)(4) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.* The text of this subsection outlines the requirements for initial permit issuance for Non-Transferable Market Squid Brail Permits. Non-Transferable permits were established by the Commission to provide an opportunity for 20-year California fishermen to continue in the squid

fishery if they had participated in one or more prior years, pursuant to Section 8101 of the Fish and Game Code. Because the Commission specified a requirement that individuals possess a 2004-2005 squid vessel or light boat permit for qualification of 20-year grandfather permits, much of the proposed regulatory text of this subsection for brail permits was amended for consistency with the non-transferable vessel permit class. The revised regulatory text is simpler as there is no longer a need to establish a complex set of criteria that would limit the number of potential qualifiers.

However, because the Commission did adopt the specific qualifying catch history for this class of permit at the August 27, 2004 adoption hearing (10 brail landings in a season between January 1, 2000 and March 31, 2003), the proposed regulatory text reflects the actions taken, and the prior options were eliminated.

6. *Subsection (d) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.* The text of this subsection describes the initial permit issuance application process, requirements and deadlines. The Department proposes the Commission approve an amendment to the adopted regulatory text to specify that the application form number is FG 1315 (8/04), and it is incorporated by reference into the regulations. The form reference was not available at the time the prior notice was filed.

7. *Subsection (g) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.* The text of this subsection describes permit renewal application processes, requirements and deadlines. The Department proposes the Commission approve an amendment to the adopted regulatory text to specify that the renewal application form number is FG 1315 (8/04), and it is incorporated by reference into the regulations. The form reference was not available at the time the prior notice was filed.

8. *Subsection (k) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.* Regulations in this subsection clarify that if a partnership or corporation to which a transferable squid permit is issued is dissolved, the partnership or corporation must notify the Department of the dissolution and specify a successor. The Department proposes to add a clarifying sentence to specify that change of ownership provisions defined in subsection (l) and transfer fees in subsection (i)(2) are applicable to this situation.

9. *Subsection (o) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.* The text of this subsection describes the process by which transferable permits may be placed on a

replacement vessel. At its August 27, 2004 adoption hearing, the Commission adopted transfer provisions for Transferable Market Squid Vessel Permits and Market Squid Brail Permits that allow for these permits to be placed on vessels of comparable capacity (within 10 percent of the gross tonnage of the original vessel). Additionally, for Transferable Market Squid Vessel Permits, if the replacement vessel is not of comparable capacity, a permit may still be issued a permit with surrender of two permits that, in sum, add up to capacity that is comparable to the replacement vessel. Modifications were made to the proposed regulatory text of this subsection to reflect the actions taken as well as to make technical corrections (text of subsections (o)(5) and (o)(6) was inadvertently included twice). Other text was added to clarify provisions related to estate transfers and to specify the transfer process for Non-Transferable Market Squid Vessel Permits and Non-Transferable Brail Permits to replacement vessels, as follows:

- In the event of death of the holder of a Transferable Market Squid Vessel Permit, Transferable Market Squid Brail Permit, or a Transferable Market Squid Light Boat Permit, the estate must apply for transfer of the permit to another entity within one year of the permit holder's death.
- A Non-Transferable Market Squid Vessel Permit or a Non-Transferable Market Squid Brail Permit may not be transferred to another owner or vessel, except in the event the permitted vessel is lost, stolen or destroyed, or has suffered a major mechanical breakdown, the permit may be placed on a replacement vessel of comparable capacity, with proof that the permitted vessel is lost, stolen, or destroyed in the form of a copy of the report filed with the United States Coast Guard or any other law enforcement agency. In the case of mechanical breakdown, the application shall include an estimate of the costs to repair the vessel from a marine surveyor or boat repair yard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the **Beach Resort, Bay View Room, 2600 Sand Dunes Drive, Monterey, CA**, on Friday, December 3, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 24, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but all comments must be received no later than December 3, 2004, at the hearing in

Monterey, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. **Dale Sweetnam, Department of Fish and Game, phone (858) 546-7170, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States: The Commission has made an initial determination that the adoption of the recommended regulations may result in adverse economic impacts directly affecting California's small businesses associated with the market squid fishery. However, the potential economic impacts would not affect the ability of California's small businesses to compete with businesses in other states.

Implementing restricted access fishery regulations and ensuing fleet reductions, could result in potential direct ex-vessel revenue losses as high as \$3,047,071 fleet wide. This is based on averaged 5-year landings information. On an individual basis, these losses could range from \$38,000 to \$98,000 (before deducting costs of doing business) for each fisherman removed from the fishery. Details of these potential impacts are presented in the Market Squid Fishery Management Plan, dated July 7, 2003, Section 1, Table 3-21. Contact the Agency representative named herein for a complete analysis of the impacts.

Reducing the statewide seasonal harvest to levels ranging from 11,000 to 80,000 short tons, could result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. Potential direct revenue losses to individual fishermen will depend on how many fishermen remained in the fishery, but could range from \$7,400 to \$117,500 per individual (before deducting costs of doing business).

An updated evaluation of adverse economic impacts is now available, and is included in the Market Squid Fishery Management Plan (dated April 12, 2004).

The regulations proposed would directly affect approximately 230 commercial market squid fishermen and light boat operators. The direct impacts to the private sector will depend on which of the proposed management measures and regulations are adopted. There are three primary areas of the proposed regulations that may have significant economic impact to the businesses associated with the market squid fishery:

- Seasonal and regional catch limits; ranging from 22,000,000 to 250,000,000 pounds statewide (11,000 to 125,000 short tons), and 11,000,000 to 223,200,000 pounds regionally (5,500 to 111,600 short tons),
- Implementation of a Restricted Access Squid Fishery; no new permits would be issued and permit renewal is subject to eligibility criteria intended to reduce the fleet size from about 230 permittees to as many as 148 to 199 permittees,
- Changes to annual permit fees; ranging from \$400 to \$5,000.

Average market squid landings for calendar years 2001 and 2002 were 183,050,000 pounds statewide (91,525 short tons) at an ex-vessel value of about \$20,800,000. Among the roughly 230 market squid permit holders, this represents potential individual revenues of approximately \$90,400 annually (on average and before deducting costs of doing business).

Reducing the statewide seasonal harvest to levels less than recent landings, at levels ranging from 22,000,000 to 160,000,000 pounds (11,000 to 80,000 short tons), would result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. The majority of these impacts would occur in the Counties of Monterey, Santa Barbara, and Los Angeles, where most market squid landings are made. Potential revenue losses to individual fishermen would depend on how many fishermen remained in the fishery. Other proposed statewide seasonal levels of 236,000,000 and 250,000,000 pounds (118,000 and 125,000 short tons) would not present an economic impact to the fishery since these levels are above average catches in recent years.

Proposed regional catch limits, for the area North of Point Conception and area South of Point Conception, could impact local coastal communities disproportionately through reduced catch levels. The proposed 11,000,000 to 15,200,000 pound catch limits (5,500 to 7,600 short tons) for the North region and 131,000,000 to 233,000,000 pounds (65,500 to 111,600 short tons) for the South region potentially results in a much larger impact to fishermen in the North region. Recent landings information for the two regions (for calendar years 2001 and 2002 averaged), were about 75,200,000 pounds (37,600 short tons) for the North region and about 274,800,000 pounds (137,400 short tons) in the South annually. The potential loss in ex-vessel revenue for the North region fishermen ranges from \$6.8 million to \$7 million (an 80 percent to 85 percent reduction from recent landings revenues), and ranges from \$5.8 to \$16 million (a 19 percent to 52 percent reduction from recent landings revenues) for South region fishermen. However, since Northern landings were unusually high in calendar year 2002, these impact estimates are likely to be overstated.

Regulations that would establish a restricted access fishery work in tandem with proposed eligibility criteria to determine which fishermen will remain in the fishery. Depending on the criteria adopted, the fleet of permittees may be reduced by 31 to 81 permits, in order to arrive at a fleet of 148 to 199 permittees. The proposed eligibility criteria are crafted to exclude fishermen who historically have had only marginal participation in the fishery; for example excluded fishermen may represent only 17 percent of the seasonal ex-vessel revenue generated by the entire fleet. Thus potential ex-vessel revenue losses to individual fishermen culled from the fishery, based on averaged 5-year landings information, could range from \$38,000 to \$98,000 per permittee (before deducting costs of doing business).

New fees may be stipulated under the proposed regulations, depending on which regulatory options

are adopted. Currently, annual permit fees for market squid light boats and market squid fishermen are \$400. The regulations propose new annual fees ranging from \$400 to \$5,000. Permit transfer fees (or upgrade fees) currently at \$250 per transfer, may range from \$250 to \$1,000, depending on which regulations are adopted. The projected financial impact of the proposed permit fees to the average fisherman, calculated as the Present Value of permit fees paid over a 5-year time period, discounted at the 2002 Federal 5-year Treasury Bill rate of 3.82 percent, ranges from \$1,800 to \$22,400.

The proposed regulations may result in changes in seasonal market squid harvests statewide. Reducing the statewide seasonal harvest to levels less than recent landings, at levels ranging from 22,000,000 pounds to 160,000,000 pounds (11,000 to 80,000 short tons), would result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. Extrapolating these potential revenue losses to the local economies, through the use of an output demand multiplier of 1.61, yields economic impact estimates of \$2,700,000 to \$28,000,000 in lost economic output demand statewide. Proposed statewide seasonal catch levels of 236,000,000 and 250,000,000 pounds statewide (118,000 and 125,000 short tons) would not present a statewide economic impact to the fishery since these levels are above average catches in recent years.

Statewide costs or economic impacts associated with implementing a restricted access fishery, and the ensuing loss of fishermen through permit reductions, are based on an estimated \$3.7 million loss in ex-vessel revenue production capacity due to fleet reduction. Apportioning this \$3.7 million among the respective local economies and using appropriate output demand multipliers, yields potential reduction of \$6 million to \$7.8 million statewide in economic demand output (this recognizes that each \$1 of ex-vessel revenue generates \$1.61 to \$2.05 in economic activity for local economies). Further details on these economic impacts are presented in the April 12, 2004, Market Squid Fishery Management Plan, see Section 3, Item 1.1.3.

The Commission has made an initial determination that the amendment of these regulations may have a significant, statewide adverse economic impact directly affecting businesses. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;

- (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: Regulations to establish a restricted access fishery and the associated eligibility criteria may result in loss of 31 to 81 market squid fishing jobs.
- (c) Cost Impacts on a Representative Private Person or Business: Reducing the statewide seasonal harvest to levels ranging from 11,000 to 80,000 short tons, could result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. Potential direct revenue losses to individual fishermen will depend on how many fishermen remained in the fishery, but could range from \$7,400 to \$117,500 per individual (before deducting costs of doing business).

Implementing restricted access fishery regulations and ensuing fleet reductions, could result in potential direct ex-vessel revenue losses as high as \$3,047,071 fleet wide. This is based on averaged 5-year landings information. On an individual basis, these losses could range from \$38,000 to \$98,000 (before deducting costs of doing business) for each fisherman removed from the fishery. Details of these potential impacts are presented in the Market Squid Fishery Management Plan, dated July 7, 2003, Section 1, Table 3-21. Contact the Agency representative named herein for a complete analysis of the impacts.

Other private person or business costs impacts that could arise from the proposed action are increases in market squid permit fees. Currently market squid permits fees are set at \$400 annually, and depending on the regulations adopted could increase to as much as \$5,000 annually.

- (d) Costs or Savings to State Agencies or Costs/ Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DECISION NOT TO PROCEED

HORSE RACING BOARD

NOTICE OF DECISION NOT TO PROCEED WITH RULEMAKING ACTION RULES 1420. DEFINITIONS 1615. SCALE OF WEIGHTS FOR AGE 1616. MINIMUM WEIGHTS TO BE CARRIED 1684. ITEMS INCLUDED IN WEIGHT

Pursuant to Government Code Section 11347(a), the California Horse Racing Board has decided not to proceed with the amendment of rules 1420, Definitions and 1615, Scale of Weights for Age, and the repeal of rules 1616, Minimum Weights to Be Carried and 1684, Items Included in Weight, of Title 4, Division 4, of the California Code of Regulations.

The notice of proposal to amend rules 1420 and 1615 and repeal rules 1616 and 1684 was published in the California Regulatory Notice Register on July 2, 2002, notice file number Z-04-0622-09.

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov. You may also request a copy of a decision by contacting the Office of Administrative Law,

300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225; FAX (916) 323-6826. Please request by OAL file number.

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW (Gov. Code Sec. 11349.3) OAL File No. 04-0811-03 C

DECISION OF DISAPPROVAL OF CERTIFICATE OF COMPLIANCE

In re:

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

REGULATORY ACTION:

Title 04, California Code of Regulations

ADOPT SECTION: 144

SUMMARY OF REGULATORY ACTION

This filing is a certificate of compliance for an emergency regulatory action which incorporates penalty guidelines for use in disciplinary actions under the Alcoholic Beverage Control Act and Administrative Procedure Act. On September 23, 2004, the Office of Administrative Law disapproved this regulatory action because an Initial Statement of Reasons had not been prepared, made available to the public, and included in the rulemaking file.

September 30, 2004

CRAIG S. TARPENNING
Senior Staff Counsel

For: WILLIAM L. GAUSEWITZ
Director

Original: Jerry Jolly, Director
cc: Theresa Laster

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

ACUPUNCTURE BOARD**Educational Curriculum Requirements**

The regulatory action deals with educational curriculum requirements.

Title 16

California Code of Regulations

ADOPT: 1399.434, 1399.435 AMEND: 1399.415, 1399.416, 1399.436

Filed 10/05/04

Effective 11/04/04

Agency Contact:

Marilyn Nielsen (916) 263-2682

BOARD OF PHARMACY**Sterile Compounding Standards**

This action is the resubmittal of previously disapproved OAL file number 04-0308-01S. This action implements S.B. 293 (Chap. 827, Stats. 2001) by establishing required standards for compounding injectable sterile drug products.

Title 16

California Code of Regulations

ADOPT: 1751.01, 1751.02 AMEND: 1751, 1751.2, 1751.3, 1751.4, 1751.5, 1751.6, 1751.7, 1751.9 REPEAL: 1751.8

Filed 09/29/04

Effective 10/29/04

Agency Contact:

Paul Riches (916) 445-5014 x4016

DEPARTMENT OF FOOD AND AGRICULTURE**Equine Medication Monitoring Program**

The regulatory action sets the applicable Equine Medication Monitoring Program fee beginning January 1, 2005 at \$5 per horse entered per event with an exception that where a horse is entered in simultaneous events held as a single performance, the total applicable fee per horse shall be \$5.

Title 3

California Code of Regulations

AMEND: 1280.2

Filed 10/04/04

Effective 11/03/04

Agency Contact: Nancy Grillo (916) 651-7280

DEPARTMENT OF FOOD AND AGRICULTURE**Schedule IV**

Existing section 3902 of title 3 of the California Code of Regulations provides a schedule of fees to recover its costs for requested sampling and testing of agricultural and vegetable seed. These Department wishes to revise these fees as their costs have gone up. This regulatory action repeals section 3902 and adopts a new subsection (f) to section 4603 to include an updated schedule of fees. Pursuant to subsection (h) of

Food and Agricultural Code section 5852, this regulatory action is not subject to review by the Office of Administrative Law.

Title 3

California Code of Regulations

AMEND: 3877(a), 3883, 3885(a)(b), 4603(f) REPEAL: 3902

Filed 10/06/04

Effective 11/05/04

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE**Milk Producers Security Trust Claims**

This regulatory action adopts accounting procedures and principles used to allocate payments and charges for bulk milk between dairy producers and handlers.

Title 3

California Code of Regulations

ADOPT: 2042, 2100, 2101, 2102

Filed 10/06/04

Effective 11/05/04

Agency Contact: Robert Maxie (916) 341-5901

DEPARTMENT OF HEALTH SERVICES**Acute Inpatient Intensive Rehabilitation/Manual of Criteria**

This regulatory action amends the Manual of Criteria to conform to recent court cases.

Title 22

California Code of Regulations

AMEND: 51003

Filed 09/29/04

Effective 10/29/04

Agency Contact:

Barbara S. Gallaway (916) 657-3197

DEPARTMENT OF HEALTH SERVICES**Drug Medi-Cal Rates for Fiscal Year 2002–2003**

This is the Certificate of Compliance for the emergency filing (OAL file no. 04-0412-05E; DHS file no. R-14-02E) that revised the reimbursement rates for Fiscal Year 2002–2003 which the Department of Alcohol and Drug Programs will use to reimburse certified providers for providing substance abuse treatment services to eligible Medi-Cal beneficiaries.

Title 22

California Code of Regulations

AMEND: 51516.1

Filed 09/29/04

Effective 09/29/04

Agency Contact:

Jasmin Delacruz (916) 657-0501

DEPARTMENT OF HEALTH SERVICES**Medi-Cal Enrollment Process and Criteria**

The emergency regulatory action deals with the Medi-Cal Process and Criteria. Pursuant to Welfare

and Institutions Code section 14043.75 this regulatory action is a deemed emergency that is exempt from OAL review. (Department of Health Services File R-04-04E.)

Title 22

California Code of Regulations

ADOPT: 51000.10.1, 51000.15.1, 51000.20.9, 51000.31, 51000.51, 51000.52, 51000.53, 51000.60
AMEND: 51000.1, 51000.1.1, 51000.3, 51000.4, 51000.6, 51000.7, 51000.16, 51000.30, 51000.35, 51000.40, 51000.45, 51000.50, 51000.55, 51051, 51451

Filed 09/29/04

Effective 10/07/04

Agency Contact:

Jasmin Delacruz (916) 657-0501

**DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT**

Enterprise Zone

This emergency rulemaking action sets the fee to be paid by an enterprise zone based upon its review of the application of an employer hiring an employee in an enterprise zone while seeking a tax credit based upon the hardship status of that employee and a certificate confirming such eligibility.

Title 25

California Code of Regulations

ADOPT: 8430, 8431, 8432, 8433, 8434, 8735

Filed 09/30/04

Effective 09/30/04

Agency Contact: Lenora Frazier (916) 323-4475

DEPARTMENT OF INSURANCE

Amendment to "Principally at Fault" Regulation

In this regulatory action, the Department of Insurance amends an automobile insurance regulation pertaining to Eligibility to Purchase Good Driver Discount Policy and Guidelines for Determination of "Principally at Fault."

Title 10

California Code of Regulations

AMEND: 2632.13(e)

Filed 10/04/04

Effective 11/03/04

Agency Contact: Daniel Goodell (415) 538-4191

DIVISION OF WORKERS COMPENSATION

Workers' Compensation—Collective Bargaining Agreements

Labor Code section 3201.7 as adopted 1/1/04 allows unions and employers who have a collective bargaining relationship to agree on a labor-management agreement that may establish, among other things, an alternative dispute resolution process in place of existing procedures required under the Labor Code and an exclusive list of medical providers and

medical-legal evaluators. This filing is a certificate of compliance for an emergency regulatory action implementing the statute.

Title 8

California Code of Regulations

ADOPT: 10202, 10102.1, 10203.1, 10203.2

AMEND: 10200, 10201, 10203, 10204

Filed 10/04/04

Effective 10/04/04

Agency Contact: James Robbins (415) 703-4600

EDUCATION AUDIT APPEALS PANEL

**Audits of K–12 Local Education Agencies Fiscal
Year 2004–05**

This is the first emergency readoption of an action that updates the audit guide for annual review of the books and accounts of local education agencies.

Title 5

California Code of Regulations

ADOPT: 19814.1, 19832, 19833, 19834, 19835, 19837, 19837 AMEND: 19814

Filed 09/30/04

Effective 10/15/04

Agency Contact:

Carolyn Pirillo (916) 445-7745

MEDICAL BOARD OF CALIFORNIA

Disclosure of Multiple Malpractice Settlements

In this regulatory action, the Medical Board of California adopts a regulation setting forth the definitions of terms pertaining to the disclosure of multiple settlements of physicians and surgeons, pursuant to Business and Professions Code section 803.1.

Title 16

California Code of Regulations

ADOPT: 1355.31

Filed 10/04/04

Effective 11/03/04

Agency Contact:

Kevin A. Schunke (916) 263-2368

**OCCUPATIONAL SAFETY AND HEALTH (CAL-
OSHA) DIVISION**

Conveyance Fee

Labor Code section 7314 authorizes the Division of Occupational Safety and Health to fix and collect fees for the inspection of elevators. Effective January 1, 2003, Labor Code section 7314 was amended to authorize inspection fees for other types of conveyances. This emergency regulatory action would amend existing section 344.20 of title 8 of the California Code of Regulations to fix fees for other types of conveyances, to increase certain of the existing fees to cover the costs the Division incurs in performing inspections, and to make other minor changes to the regulation. Subsection (d) of Labor Code section 7314

provides that any fees required pursuant to that section shall be adopted as emergency regulations and shall not be subject to review by the Office of Administrative Law.

Title 8
California Code of Regulations
AMEND: 344.30
Filed 10/06/04
Effective 10/06/04
Agency Contact:
Christopher P. Grossgart (415) 703-5080

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**
Methyl Hydrazine

This regulatory action concerns employee exposure to airborne contaminants and skin contact, and revises the permissible exposure limit (PEL) for methyl hydrazine by designating the PEL as a time weighted average rather than a ceiling limit.

Title 8
California Code of Regulations
AMEND: 5155
Filed 10/01/04
Effective 10/31/04
Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**
Working Warehouses

This regulatory action deals with the requirement that merchandise stored on shelves higher than 12 feet above the sales floor of a working warehouse shall be properly secured and clarifies that the 12-foot distance shall be measured from the floor to the top plane of the shelf on which the merchandise is stored, not the distance from the floor to the top of the merchandise.

Title 8
California Code of Regulations
ADOPT: 3241.1
Filed 10/01/04
Effective 10/31/04
Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**
PPE—Head Protection

The regulatory action deals with Personal Protective Equipment-Head Protection.

Title 8
California Code of Regulations
AMEND: 3381
Filed 09/30/04
Effective 10/30/04
Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**
Airborne Contaminants

This regulatory action revises the minimum requirements for controlling employee exposure to specific airborne contaminants, including specifying several types of airborne exposure limits, requirements for control of skin and eye contact, workplace environmental monitoring, and medical surveillance requirements.

Title 8
California Code of Regulations
AMEND: 5155
Filed 10/04/04
Effective 11/03/04
Agency Contact: Marley Hart (916) 274-5721

SECRETARY OF STATE
Standards for Proof of Residency When Proof is Required By HAVA

In this regulatory action, the Secretary of State readopts an emergency regulation setting forth standards for proof of voter residency or identity when proof is required under the Help America Vote Act of 2002 (HAVA).

Title 2
California Code of Regulations
ADOPT: 20107
Filed 09/29/04
Effective 09/29/04
Agency Contact: Lisa B. Niegel (916) 653-3345

STATE WATER RESOURCES CONTROL BOARD
Water Quality Control Plan, San Francisco Bay

This action modifies the San Francisco Bay Basin Plan by, among other changes, adopting the California Toxics Rule (40 CFR 131.38) criteria in lieu of existing Basin Plan objectives for eight metal pollutants. This action is submitted to OAL for review pursuant to Government Code section 11353.

Title 23
California Code of Regulations
ADOPT: 3914
Filed 10/04/04
Effective 11/03/04
Agency Contact: Joanne Cox (916) 341-5552

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN MAY 19, 2004
TO OCTOBER 6, 2004**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and

Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

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 09/15/04 ADOPT: 599.511 AMEND: 599.500(t)
 09/10/04 AMEND: 54300
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 08/31/04 ADOPT: 599.517
 08/20/04 ADOPT: 586, 586.1, 586.2
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 08/04/04 AMEND: 599.515(e)
 07/30/04 ADOPT: 18531.10
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 07/22/04 ADOPT: 1859.51.1, 1859.70.2 AMEND: 1859.2, 1859.51, 1859.70, 1859.103
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 06/15/04 ADOPT: Div. 8, Ch. 99, Sec. 58800
 06/15/04 AMEND: 18707.1
 06/03/04 AMEND: 2270, 2271
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